

EXHIBIT 40

Reid, Robert Paul

December 15, 2008

Columbus, OH

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

- - - - -) MDL No. 1456
IN RE: PHARMACEUTICAL INDUSTRY) Master File No.
AVERAGE WHOLESALE PRICE LITIGATION) 01-12257-PBS
-----)
THIS DOCUMENT RELATES TO:) Hon. Patti B.
United States of America ex rel.) Saris
Ven-A-Care of the Florida Keys,)
Inc, et al. v. Dey, Inc., et al.,)
Civil Action No. 05-11084-PBS)

VIDEOTAPED DEPOSITION OF ROBERT PAUL REID

Monday, December 15, 2008

9:59 o'clock a.m.

Jones Day

325 John H. McConnell Boulevard

Suite 600

Columbus, Ohio 43215

SHAYNA M. GRIFFIN

REGISTERED PROFESSIONAL REPORTER

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| <p>1 words, the New York attorneys -- Attorney 2 General's office was not telling states that they 3 had to do something because of this information. 4 MR. TORBORG: I'd like to mark as 5 another exhibit -- this will be Abbott/Reid 3. 6 This is an excerpt from a deposition that I took 7 of an individual by the name of Harry Leo 8 Sullivan. 9 A. I know Leo, Tennessee. 10 Q. Okay. He was -- he had your job in 11 Tennessee is your understanding? 12 A. Yes, yes. A little different slant 13 to it because they were mostly managed care. 14 Q. Sure. 15 A. And we weren't at the time. 16 Q. I'd like you, if you would, to go to 17 the second page of -- 18 --- 19 (And, thereupon, Exhibit Abbott-Reid 20 003 was marked for purposes of identification.) 21 --- 22 BY MR. TORBORG:</p> | <p>1 "Question: Did you believe that you 2 could shave 20, 30 percent off of it" -- and I'm 3 referring to AWP here. 4 A. Uh-huh. 5 Q. -- "and get a reliable number of what 6 pharmacies and physicians actually paid for 7 drugs? 8 "Answer: Well, it would depend on -- I 9 mean, are we talking brand or generic? 10 "Question: Both right now. Would you 11 draw a distinction? 12 "Answer: Oh, yeah, yeah. 13 "Question: All right. 14 "Answer: The generic drugs, you know, 15 you could pay AWP minus 80 percent and still the 16 pharmacists make money for some, I assume. But 17 AWP minus 25 might be below cost for a brand name 18 drug for a rural pharmacy that has very small 19 volume. Okay. So there is -- there is a 20 difference between brand and generic. 21 "In Tennessee, it wasn't as pronounced 22 because, you know, what I did as part of my job,</p> |
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| <p>1 Q. I'd just like to read to you some of 2 his testimony and get your response to it. 3 A. The second page, okay. 4 Q. Second page, starting at page 100 in 5 the top right corner. There are four pages per 6 -- four pages of transcript -- 7 A. Oh, 100. Yeah, I got it. 8 MS. GEOPPINGER: Bear with me just one 9 second. 10 Mr. Reid, how it works on these 11 transcripts is it reads down this way, okay. 12 THE WITNESS: I got you. So this is 13 100 here? 14 MS. GEOPPINGER: Yes. 15 BY MR. TORBORG: 16 Q. I'll be asking you to follow along as 17 I read page 100, line 13. See the little 13 on 18 the left side there? 19 A. Yes. 20 Q. Down to page 101, 18. I'll go ahead 21 and read into the record, if you will follow 22 along.</p> | <p>1 as soon as a drug became multi-source, and after 2 OBRA '90, as soon as that drug -- the multisource 3 version of the drug was cheaper than the brand 4 name net-net of Medicaid rebates, we MACed it. So 5 AWP wasn't an issue on the generic side." 6 A. Correct. 7 Q. "Question: And why did you --" then 8 the answer, "But to say 20, 30 percent, use that 9 number, you would have to distinguish between 10 brand and generic." 11 Do you see that? 12 A. I got it. 13 Q. Do you have an understanding of what 14 his testimony was there? 15 MS. GEOPPINGER: Object to the form of 16 the question. 17 You can answer if you know. 18 A. I can say that I don't know what -- 19 where Mr. Sullivan was coming from, but I would 20 say generally that I might have responded to 21 those questions in the same manner. He's making 22 a clear distinction between trade name drugs and</p> |

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| <p>1 generic drugs, and that is true.</p> <p>2 Q. That's something that you understood</p> <p>3 as well?</p> <p>4 A. Yes.</p> <p>5 Q. That discounts were higher on the</p> <p>6 generic side than they were on the brand name</p> <p>7 side?</p> <p>8 A. The representation of AWP, the</p> <p>9 difference between AWP and AAC was greater on the</p> <p>10 generic side than it was on the trade name side.</p> <p>11 Q. That's something that you were aware</p> <p>12 of?</p> <p>13 A. Yes, I was aware of that.</p> <p>14 Q. Now, Ohio at some point used</p> <p>15 something called wholesale acquisition cost to</p> <p>16 reimburse pharmacies --</p> <p>17 A. Yes.</p> <p>18 Q. -- correct?</p> <p>19 A. Yes.</p> <p>20 Q. What was your understanding of what</p> <p>21 wholesale acquisition cost represented?</p> <p>22 A. Well, what the wholesaler paid for</p> | <p>1 A. Okay.</p> <p>2 Q. Mr. Reid, do you -- after you've had</p> <p>3 a chance to look at this document -- take all the</p> <p>4 time you need --</p> <p>5 A. Thank you.</p> <p>6 Q. -- my first question will be just</p> <p>7 whether you recall it?</p> <p>8 A. Okay. I do recall it.</p> <p>9 Q. Did you draft this letter?</p> <p>10 A. I did.</p> <p>11 Q. Okay. On or around February 25th,</p> <p>12 1997?</p> <p>13 A. Correct.</p> <p>14 Q. And then you've copied a Bill Ryan</p> <p>15 and a Patrick Lanahan. Who are they?</p> <p>16 A. Bill Ryan was the director of the</p> <p>17 department, and Patrick Lanahan was the bureau</p> <p>18 chief before Robyn Colby.</p> <p>19 Q. They were people with -- that were</p> <p>20 employed by Ohio, those two people? Mr. Ryan --</p> <p>21 A. Yes, Yes.</p> <p>22 Q. Now, in the first paragraph you've</p> |
| Page 111 | Page 113 |
| <p>1 the drugs from the manufacturer.</p> <p>2 Q. Did you have an understanding -- what</p> <p>3 understanding did you have regarding the</p> <p>4 relationship between AWP and WAC, WAC being short</p> <p>5 for wholesale acquisition cost?</p> <p>6 A. Uh-huh. We always used the baseline</p> <p>7 if the AWP was a dollar, the WAC would be 80</p> <p>8 cents for trade name drugs.</p> <p>9 Q. How about for generic drugs?</p> <p>10 A. All over the board.</p> <p>11 MR. TORBORG: Mark as Abbott/Reid 4</p> <p>12 another document.</p> <p>13 ---</p> <p>14 (And, thereupon, Exhibit Abbott-Reid</p> <p>15 004 was marked for purposes of identification.)</p> <p>16 ---</p> <p>17 BY MR. TORBORG:</p> <p>18 Q. For the record, what I've marked as</p> <p>19 Abbott/Reid 4 bears the Bates No. OH004755</p> <p>20 through 56. Appears to be a February 25, 1997,</p> <p>21 letter from Mr. Reid to an Ernie Boyd, Executive</p> <p>22 Director, Ohio Pharmacists Association.</p> | <p>1 indicated, "Pursuant to our recent meeting, I</p> <p>2 wanted to respond to your request for the</p> <p>3 relationship between WAC, wholesale acquisition</p> <p>4 cost, and AWP, average wholesale price, based on</p> <p>5 our perceptions here at the department"; right?</p> <p>6 A. Right.</p> <p>7 Q. And this was something that was</p> <p>8 happening because on or around this time Ohio was</p> <p>9 moving to -- from an AWP-based formula for</p> <p>10 trading drugs to a WAC-based formula; correct?</p> <p>11 A. Yes. Yes.</p> <p>12 MS. GEOPPINGER: For the record, I'm</p> <p>13 just going to object to the form.</p> <p>14 THE WITNESS: Okay to answer?</p> <p>15 MS. GEOPPINGER: Yes.</p> <p>16 THE WITNESS: We went -- I recall that</p> <p>17 we went from AWP minus 7 percent to WAC plus 11</p> <p>18 percent. And I think the reason we did that was</p> <p>19 we were in a budget crunch, and since AWP --</p> <p>20 since WAC plus 11 percent equated to AWP minus I</p> <p>21 think it was 11.2, you could see that the -- we</p> <p>22 were decreasing the reimbursement that we were</p> |

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| <p style="text-align: right;">Page 114</p> <p>1 paying to pharmacies. And at the time we were 2 paying, to my recollection, for about 30 million 3 prescriptions a year because we didn't have 4 managed care. And all of our patients were in 5 fee for service. So changing the reimbursement 6 level slightly added up to a lot of savings. 7 BY MR. TORBORG: 8 Q. You indicate in the second paragraph, 9 first sentence, that Ohio is at this time paying 10 trade name drugs at AWP minus seven percent; 11 correct? 12 A. Yes, right. 13 Q. And then there were some specific 14 manufacturers that were paid at a direct price? 15 A. Yes, because they were routinely and 16 commonly purchased by the pharmacies directly. 17 Q. Okay. And then you indicate in the 18 -- I guess it would be fifth sentence down, "The 19 composite for all trade name drugs has been 20 calculated to be AWP minus 7.44 percent." 21 Do you see that? 22 A. The composite, yeah. The composite</p> | <p style="text-align: right;">Page 116</p> <p>1 is approximately AWP minus 19 percent"; right? 2 A. Okay. Okay. 3 Q. Do you recall where you got that 4 information for those estimates? 5 A. I don't recall. 6 Q. But what you're saying here is that 7 you estimated at that time that, on average, 8 pharmacies were purchasing trade name drugs at 9 AWP minus 19 percent; is that right? 10 A. I don't think I made that assumption. 11 We estimate that the composite is approximately 12 AWP minus 19 percent. That's -- that's what the 13 wholesalers paid the manufacturers. It didn't 14 have anything to do with the pharmacies. 15 Q. Okay. And did you have an 16 understanding of the amount that the wholesalers 17 would charge to the pharmacies for trade name 18 drugs in relation to these figures? 19 A. Well, it would be -- it would be WAC 20 plus something depending on the volume purchase 21 agreement. I think we chose WAC plus 11 because 22 we had to take into consideration rural stores as</p> |
| <p style="text-align: right;">Page 115</p> <p>1 for all trade name drugs has been calculated to 2 be AWP minus 7.44 percent. I have no idea how I 3 arrived at that number. 4 Q. But that was what -- for trade name 5 drugs, that was the average payment amount when 6 you -- 7 A. At the time, yes. 8 Q. So that would include the direct 9 price-based reimbursements from Lederle, Wyeth 10 and Upjohn? 11 A. Yeah. I think it says the composite 12 for all trade name drugs. Yes. 13 Q. Okay. Now, do you recall, what was 14 the -- at this time, do you have a sense for what 15 was the average price of a trade name drug? 16 A. I don't have a sense. 17 Q. The next -- the next sentence in that 18 paragraph you wrote, "It is our understanding 19 that wholesalers generally buy from trade name 20 manufacturers at between AWP minus 16 percent and 21 AWP minus 20 percent." And then the next 22 sentence states, "We estimate that the composite</p> | <p style="text-align: right;">Page 117</p> <p>1 well as big chain stores. Not all of them had 2 the same buying power, so we had to arrive at a 3 number that was what we thought was fair. 4 Q. You -- because of the issue with the 5 rural pharmacies, you couldn't pay at the average 6 amount the pharmacies paid? 7 A. Could not. 8 Q. And that was -- that was an issue 9 that was an access-based concern? 10 A. Access, right. Right. We needed the 11 access. 12 Q. In the next sentence you stated, 13 "Thus, if WAC equals 80 percent of AWP" -- 14 A. 81, I think it says. 15 Q. "81 percent of AWP" -- 16 A. Uh-huh. 17 Q. -- "then WAC plus 9 percent equals 18 88.29 percent of AWP." Do you see that? 19 A. I see that. 20 Q. And that's very consistent with the 21 testimony you gave before I even showed you the 22 document --</p> |

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1 A. Well, I think we took into
2 consideration -- let's take the example of
3 Phenergan 12 and a half milligram that we used
4 earlier. We would try to determine how much
5 pharmacies were paying for each version of that
6 from the various generic companies, and we put
7 them on a grid and picked the one price that was
8 available 65 percent of the time.
9 Q. Let me back up a little bit.
10 Where did you get the -- those prices
11 from?
12 A. First DataBank, mostly.
13 Q. For the generic drugs?
14 A. Well, they would give us -- they
15 would give us a starting point -- when they sent
16 their monthly reports to us, they would give us a
17 starting point of WAC plus seven for the -- I
18 think it was whatever -- whatever the going rate
19 was at the time. We wouldn't necessarily use
20 those prices, but they would be ones that we
21 would put in that grid to determine which one was
22 the 65th percentile. Very complicated.

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1 Q. Which other prices would you use?
2 A. Oh, we would call pharmacies and ask
3 them. Pharmacies would call us and volunteer
4 information. And we, in more recent times, were
5 using the MAC prices that were set by other
6 states, all of which were public record.
7 Q. Which pharmacies would you call?
8 A. I would call my own, which was
9 Northland Pharmacy, in Columbus. I would call
10 Cline's Pharmacy in Akron. And there was a rural
11 store that I called, which has since gone out of
12 business, just to get a feel for what was going
13 on in the market, the dynamics of the
14 marketplace.
15 Q. And they would provide you with a
16 price at which they actually purchased the drug?
17 A. Yes.
18 Q. And those are the prices that you
19 would then put in your grid?
20 A. Yes. Sometimes a pharmacy would
21 object to the price that we had set and they
22 would send an invoice as documentation of what

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1 they were really paying for a product. And they
2 would encourage us to raise our allowable. A lot
3 of times there was a lot of other information on
4 that invoice that we would use.
5 Q. What other information?
6 A. Well, prices of other drugs.
7 Q. Okay.
8 A. Sometimes, you know, stores would
9 black out everything except they would only
10 answer the question. But other times they would
11 send an invoice -- a copy of an invoice that gave
12 us a lot of information.
13 Q. And some pharmacies actually called
14 to volunteer this information to you?
15 A. Once in a while I would get a call --
16 understandably, not very often -- you're paying
17 too much. And they would be representing
18 themselves as a taxpayer.
19 Q. So the prices that you used to set
20 the MAC amount, those were based on actual prices
21 that you got from pharmacies; correct?
22 A. Right.

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1 Q. They are not based on --
2 A. Well, partly, yeah.
3 Q. What else were they based on?
4 A. Well, we would take the First
5 DataBank price into consideration, although
6 rarely use it on the grid, unless it was
7 reasonable, comparable.
8 Q. So if the First DataBank price was
9 not comparable to the other prices, you wouldn't
10 use it?
11 A. No. I would consider it to be an
12 outlier.
13 Q. If it was an outlier, it wouldn't
14 even go into the 65th percentile calculation?
15 MS. GEOPPINGER: Object to the form of
16 the question.
17 You can answer.
18 A. Yes.
19 Q. And you did all this by yourself?
20 A. I did it all by myself up until 2001.
21 Q. Now, it says here that --
22 MS. GEOPPINGER: What are we looking

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| <p style="text-align: right;">Page 162</p> <p>1 at? I'm sorry.</p> <p>2 BY MR. TORBORG:</p> <p>3 Q. Back to Section C. Reimbursement --</p> <p>4 A. C, okay.</p> <p>5 Q. Yeah. This is the last sentence of</p> <p>6 that section.</p> <p>7 MR. HENDERSON: Still on Exhibit 7?</p> <p>8 MS. GEOPPINGER: Yes.</p> <p>9 MR. TORBORG: Yes, sir.</p> <p>10 BY MR. TORBORG:</p> <p>11 Q. It says "Reimbursement for state MAC</p> <p>12 drugs shall be based on the 65th percentile of</p> <p>13 the estimated acquisition cost"; right?</p> <p>14 A. Yes.</p> <p>15 Q. Now, if there was a state MAC</p> <p>16 established for a drug, that was the price that</p> <p>17 was paid?</p> <p>18 A. Right.</p> <p>19 Q. Right?</p> <p>20 And then if we go under Section D,</p> <p>21 "Estimated Acquisition Cost."</p> <p>22 A. Uh-huh. Those were trade name.</p> | <p style="text-align: right;">Page 164</p> <p>1 the question.</p> <p>2 You can answer.</p> <p>3 A. Generally right, correct.</p> <p>4 Q. So if we could go back to the first</p> <p>5 page of this exhibit, 406, it states,</p> <p>6 "Reimbursement for drugs is based on the lowest</p> <p>7 of the following."</p> <p>8 MS. GEOPPINGER: Where are you? I'm</p> <p>9 sorry.</p> <p>10 MR. TORBORG: 406.</p> <p>11 MS. GEOPPINGER: Right. What section?</p> <p>12 MR. TORBORG: First page, Section A(2).</p> <p>13 MS. GEOPPINGER: Right here.</p> <p>14 THE WITNESS: A(2), got it.</p> <p>15 BY MR. TORBORG:</p> <p>16 Q. This is where it says lowest of the</p> <p>17 following --</p> <p>18 A. Uh-huh.</p> <p>19 Q. -- the submitted UNC, we talked about</p> <p>20 that; right?</p> <p>21 A. Uh-huh.</p> <p>22 Q. It says the estimated acquisition</p> |
| <p style="text-align: right;">Page 163</p> <p>1 Q. Okay. It states there "All products</p> <p>2 other than those designated as MAC items will be</p> <p>3 considered EAC items."</p> <p>4 A. Right.</p> <p>5 Q. What does that mean?</p> <p>6 A. Estimated acquisition cost.</p> <p>7 Q. So this -- this is saying -- tell me</p> <p>8 if I'm reading this right. This is saying that</p> <p>9 if a drug has a MAC on it, it's not even</p> <p>10 considered an EAC item; right?</p> <p>11 MS. GEOPPINGER: Object to the form of</p> <p>12 the question. The statute speak for itself.</p> <p>13 You can answer the question if you</p> <p>14 know.</p> <p>15 A. Well, the term "EAC" could refer to a</p> <p>16 MAC item or it could refer to a trade name drug.</p> <p>17 But generally we use the term "EAC" for trade</p> <p>18 name drugs and we use the term "MAC" for</p> <p>19 generics.</p> <p>20 Q. Generally, MAC drugs were not EAC</p> <p>21 items; right?</p> <p>22 MS. GEOPPINGER: Object to the form of</p> | <p style="text-align: right;">Page 165</p> <p>1 cost; right?</p> <p>2 A. That would be for the trade name</p> <p>3 drugs, right.</p> <p>4 Q. Okay. That's just the trade names?</p> <p>5 A. Right.</p> <p>6 Q. Right. If a MAC is on a drug, that</p> <p>7 one doesn't even apply?</p> <p>8 A. Right. That's -- those are generics.</p> <p>9 Q. Okay. And then C is the MAC;</p> <p>10 correct?</p> <p>11 A. Right.</p> <p>12 Q. Do you know why Ohio chose to set the</p> <p>13 payment amount for MACs at the 65th percentile?</p> <p>14 MS. GEOPPINGER: Object to the form of</p> <p>15 the question.</p> <p>16 You can answer if you know.</p> <p>17 A. The director of the department at</p> <p>18 that time was Paul Offner (phonetic), now</p> <p>19 deceased. And he came up with the number. I'm</p> <p>20 sure it was somewhat arbitrary. Seemed like a</p> <p>21 nice average number.</p> <p>22 Q. So what you would do is you would</p> |

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